



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 236

[Docket No. DARS-2015-0019]

RIN 0750-AI52

**Defense Federal Acquisition Regulation Supplement: Use of
Military Construction Funds (DFARS Case 2015-D006)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2015, to require offerors bidding on DoD military construction contracts to provide opportunity for competition to American steel producers, fabricators, and manufacturers; and restrict use of military construction funds in certain foreign countries, including countries that border the Arabian Gulf.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Julie Hammond, telephone 571-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 80 FR 15909 on March 26, 2015, to implement sections 108, 111, and 112 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2015 (division I of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, Pub. L. 113-235), enacted December 16, 2014.

II. Discussion and Analysis

There were no public comments submitted in response to the interim rule. The interim rule has been converted to a final rule, without change.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

This rule is necessary to require offerors bidding on DoD military construction contracts to provide opportunity for competition to American steel producers, fabricators, and manufacturers, and implement the preference for award only to U.S. firms when awarding certain military construction and architect-engineer contracts to be performed in countries bordering the Arabian Gulf.

The objective of this rule is to implement sections 108, 111, and 112 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2015 (division I of Pub. L. 113-235). This rule extends the applicability of the requirement to provide opportunity for competition to American steel producers, fabricators, and manufacturers, and revises the preference for award to U.S. firms of military construction

contracts that have an estimated value greater than \$1,000,000 and the restriction requiring award only to U.S. firms for architect-engineer contracts that have an estimated value greater than \$500,000, to make it applicable to contracts to be performed in a country bordering the Arabian Gulf, rather than a country bordering the Arabian Sea (as required in earlier statutes).

No comments were received from the public relative to the publication of the initial regulatory flexibility analysis in the interim rule.

Section 108 will benefit any small business entities involved in producing, fabricating, or manufacturing steel products to be used in military construction. Sections 111 and 112 will only apply to a very limited number of small entities - those entities that submit offers in response to solicitations for military construction contracts that have an estimated value greater than \$1,000,000 and architect-engineer contracts that have an estimated value greater than \$500,000, when the contracts are to be performed in countries bordering the Arabian Gulf.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements.

No alternatives were identified that will accomplish the objectives of the statutes and the rule.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 225 and 236

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 225 and 236, which was published at 80 FR 15909 on March 26, 2015, is adopted as a final rule without change.

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